

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**



C.P.(IB)-1028 (MB)/C-III/2022

*(Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of
the Insolvency and Bankruptcy (Application
to Adjudication Authority) Rule 2016.)*

**Omkara Asset Reconstruction Private
Limited**

Having Registered Office at:
C/515, Kanakia Zillion, Junction of LBS
Road and CST Road, BKC Annexe
Near Equinox, Kurla (W)
Mumbai 400 070.

....Financial Creditor/Petitioner

Vs

Chemstar Organics (India) Limited

Having Registered Office at:
PNB House, Phirozsha Mehta Road, Fort,
Mumbai 400001.

.... Corporate Debtor/Respondent

Order Pronounced on: 20.02.2025

CORAM:

Ms. Lakshmi Gurung, Member (Judicial)

Sh. Charanjeet Singh Gulati, Member (Technical)

APPEARANCES:

For the Financial Creditor:

Mr. Gaurav Joshi, Sr. Counsel, a/w
Advocates Charles Desouza, Nikhil Rajani,
Shreyash Desai, Ayush Kothari i/b Ms. V.
Despande & Co.



For the Corporate Debtor: Mr. Ashish Kamat, Sr. Counsel, a/w
Advocates Prerana Wagh, Swarupini
Srinath i/b Crawford Bayley &Co.

PER: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)

1. The Present Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**'IBC'/ 'the Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Omkara Asset Reconstruction Private Limited (**'the Financial Creditor'/ 'Petitioner'**) for initiating Corporate Insolvency Resolution Process (**'CIRP'**) against Chemstar Organics (India) Limited (**'Corporate Debtor'/ 'the Respondent'**) for a default amount of **Rs.11,87,21,370** as on 28.06.2022 (Rupees Eleven Crore, Eighty Seven Lakhs, Twenty One Thousand, Three Hundred and Seventy).
2. Based on the averments in the application which are not rebutted by the Corporate Debtor, the undisputed relevant facts are: -
 - i. The Gujrat Industrial Investment Corporate Limited (**"GIIC"**) had sanctioned and disbursed term loan facilities to the Corporate Debtor under Loan Cum Agreement backed by Deed of Hypothecation. Bank of Baroda being a lead Bank to the Consortium while acting for itself and an agent of GIIC was holding all the original title deeds in respect of the mortgaged securities under joint Equitable Mortgage created on 28.07.1998 and 01.07.1999.
 - ii. According to the reply, Rs. 625 lakhs was granted to the Corporate Debtor as Term loan for setting up its expansion project for manufacture of MPB chemical at Vadodara.
 - iii. Subsequently the Corporate Debtor defaulted in payment of interest and repayment instalment and GIIC initiated action to recover dues from the Corporate Debtor by taking possession of mortgaged properties at Nandesari Unit on 01.10.2002 and Umaraya Unit on 23.06.2004.
 - iv. Thereafter the Corporate Debtor referred the matter to Board of




Industrial and Financial Reconstruction (**"BIFR"**) wherein litigation continued till dissolution of BIFR i.e. 30.11.2016.

- v. On 19.08.2017 GIIC granted one-time settlement (**"OTS"**) under the OTS Scheme 2015-III of GIIC for an amount of Rs. 987 Lakhs. In terms of the above sanction letter, the Corporate Debtor made payment of Rs. 94 lakhs.
- vi. In the meantime, the Government of Gujarat issued a Government Resolution dated 11.09.2017 to provide relief and concessions to viable sick industrial enterprises in the State of Gujarat. The scheme was availed by the Corporate Debtor. Further the Industries Commissionerate also issued a Sanction Letter for settling dues of the Corporate Debtor at 717 Lakhs therefore GIIC approved one-time settlement proposal under its letter dated 15.02.2018. Accordingly, the Corporate Debtor made part payment of Rs. 71.7 lakhs and the balance amount payable to GIIC stood at Rs. 587 Lakhs (including certain expenses that were incurred by GIIC for completion of transaction).
- vii. Subsequently, GIIC vide Tripartite Agreement dated 14.08.2018 assigned its Loan to Omkara Asset Reconstruction Private Limited. The Terms and conditions of Tripartite Agreement were as follows:
 - a) Financial Creditor (Omkara Asset Reconstruction Private Limited) to give a No-Objection Certificate to the Corporate Debtor for sale of the Nandesari factory;
 - b) Corporate Debtor to distribute proceeds of the sale consideration among secured creditors in proportion to their charge on the Respondent's assets;
 - c) Loan amount will stand reduced from Rs. 587 Lakhs to the extent of the sale proceeds received by the Financial Creditor from such sale ("balance loan amount");
 - d) On receipt of balance loan amount, along with interest as per agreed terms, the Financial Creditor to vacate its charge on the

Corporate Debtor's assets and return all security documents forthwith;

- e) On receipt of balance loan amount, the Financial Creditor shall have no further claims against the Corporate Debtor and/ or its Promoters.
- f) Assignment is restricted to prime security only;
- viii. Accordingly, the the Corporate Debtor approached the Petitioner for issue of NOC for sale of Nandesari factory. Subsequent to issue of NOC by the Petitioner and Bank of Baroda through its assignee Edelweiss Asset Reconstruction Company Ltd. the Corporate Debtor proceeded to sell its Nandesari unit. Out of sale proceeds, remitted Rs. 125 Lakhs to Edelweiss Asset Reconstruction Company Limited, proposed to make payment of Rs. 375 Lakhs to Financial Creditor vide its letter dated 04.02.2019 and to make OTS payment of Rs. 255 Lakhs within 6 months from the date of receipt of sanction with a grace period of 3 months at simple rate of interest @18% p.a.
- ix. The Financial Creditor approved OTS proposed by the Corporate Debtor vide its letter dated 03.04.2019 wherein it was stated:
- a) Out of Rs. 630 lakhs, Rs. 375 lakhs received towards release of Nandesari factory;
- b) Balance amount of Rs. 255 lakhs (inclusive of Rs. 3 lakhs towards expenses incurred) to be paid as follows:
- | Payment | Date on which payment to be made | Amt in Rupees |
|----------------|---|----------------------|
| First Trance | 31.05.2019 | 20 Lakhs |
| Second Trance | 31.08.2019 | 235 Lakhs |
- c) Grace period of 90 days shall be allowed at simple interest at 24% p.a. for the delayed period;
- d) In the event of failure to honor the repayment schedule including the grace period, the OTS will stand cancelled;



e) In case of failure of the OTS, the Financial Creditor shall proceed to enforce security interest and realize the assets charged as security;

x. However, the Corporate Debtor by its letter dated 16.04.2019 sought time to make the payment of the final OTS instalment of Rs. 235 Lakhs upto 31.03.2020 in following terms:

“After restart of operations and establishments of the Commercial Production we need a few months’ time to raise funds for the settlement of OTS dues.

We therefore request you to kindly grant us time till 31 March 2020 for the payment of the final OTS installment of Rs.235 lakhs. We shall of course strive to make the said payment as early as possible.”

xi. The Financial Creditor vide letter dated 19.04.2019 agreed to the request of the Corporate Debtor subject to paying interest @ 24% p.a. on reducing balance basis.

xii. On 28.08.2019, the Corporate Debtor forwarded its cheque dated 28.08.2019 for Rs. 21,20,000/- for the instalment payable by 31.08.2019 (including 90 days grace period) with interest.

Submission by the Financial Creditor:

3. The Financial Creditor submitted that the Corporate Debtor has failed to make any further payments as per the One Time Settlement therefore the Financial Creditor vide its various emails dated 03.10.2019, 14.10.2019, 26.11.2019, 10.12.2019, 21.12.2019 called upon the Corporate Debtor to clear the overdue amount.
4. Despite persistent requests by the Financial Creditor, the Corporate Debtor failed to make payment therefore, the Financial Creditor vide its letter dated 08.01.2020 proceeded to revoke One Time Settlement proposal and called upon the Corporate Debtor to make the payment of entire outstanding dues within 10 days.



It is submitted that the date of Default is 19.01.2020 as the Corporate Debtor failed to make the payment within 10 days of the revocation notice dated 08.01.2020.

6. The Financial Creditor vide its letter dated 01.02.2020 clarified to the Corporate Debtor that extension for payment of One Time Settlement granted till 31.03.2020 was subject to the Corporate Debtor paying interest @ 24% p.a. on reducing basis and that the extension was granted only on the principal amount and not for the payment of interest.
7. The Corporate Debtor vide its letter dated 27.06.2020 requested for extension of time till 31.12.2020, for making payment of last instalment of Rs. 235 Lakhs along with interest of Rs. 32.9 Lakhs at simple rate of 24% p.a.
8. The Financial Creditor sent letter dated 22.12.2020 referring to its Letter dated 08.01.2020 wherein OTS arrangement was revoked. Another letter dated 07.01.2021 was sent by the Financial Creditor to the Corporate Debtor stating that the dues of the Corporate Debtor remain unpaid till date and the Financial Creditor is entitled to take legal remedies.
9. Subsequently the Financial Creditor issued a notice under Section 13(2) of SARFAESI Act, 2002 dated 22.06.2021 calling upon the Corporate Debtor and its Guarantors to pay outstanding amount of Rs. 10,51,18,900/- due and payable as on 21.06.2021. Thus, it is undisputed that till 21.06.2021, the dues of the Corporate Debtor remain unpaid. Neither the principal amount nor the interest amount has been paid by the Corporate Debtor.

Reply of the Corporate Debtor:

10. It is submitted by the Corporate Debtor that the terms of OTS Sanction Letter dated 13.04.2019 clearly envisaged payment of the interest only in case of grace period availed by the Financial Creditor. Such interest payment was to be paid along with the principal amount on the due date agreed between the parties.



11. The Corporate Debtor on 28.08.2019 paid the first tranche i.e. Rs. 20 lakhs along with Rs. 1.20 lakhs (interest for grace period of 90 days) in terms of the OTS Sanction Letter. Pertinently, interest amount was paid along with the first tranche principal amount which the Financial Creditor accepted without any objections.
12. Further as per the OTS Sanction Letter dated 16.04.2019 the Corporate Debtor was prepared to make payment of the second tranche on 31.03.2020. However, the Financial Creditor vide its letter dated 08.01.2020, arbitrarily, purported to revoke the OTS Sanction Letter, on the ground of non-payment of interest from October to December 2019 and wrongfully called upon the Respondent to make payment of an exaggerated claim of Rs. 8.68 crores ("OTS Revocation Letter").
13. It is submitted that the OTS Sanction Letter read with the Extension Letter, did not cast any obligation on the Corporate Debtor to remit interest payments on a monthly basis, and only envisaged payment of a cumulative amount i.e. principal and interest together as a one shot payment to be made before 31.03.2020.
14. Despite extending the timeline for payment of second tranche to March 2020, the Financial Creditor wrongfully and prematurely revoked the OTS Sanction Letter in January 2020 i.e. even before the date on which the second tranche was due and payable. Therefore, the Corporate Debtor objected to the OTS Revocation letter vide its letter dated 17.01.2020. It is contended that the present petition is pre-matured as the default had not occurred on 08.01.2020 and on 19.01.2020 as mentioned in the petition and the date of default mentioned in the petition is erroneous.
15. It is further contended that the Debt could have only occurred on 31.03.2020 which is within 10A period and for any default occurring during 10A period, section 7 application is not maintainable. Therefore, neither debt nor default exist as mentioned in the petition and the Financial Creditor has filed petition for a non-existent debt.



6. The Financial Creditor is not entitled to file the Present Proceedings as per Clause 2 of the OTS Sanction Letter, stated that in case of failure of the OTS, the Petitioner was merely entitled to proceed to enforce security interest and realize the assets charged as security. In any event, settlement remains and the original debt is not due to the Financial Creditor.
17. It was finally contended that the documents annexed by the Financial Creditor do not establish debt and default and the Financial Creditor has not produced bank statements nor have they produced requisite certificates under the BBE Act.

Analysis & Findings

18. Heard and considered the rival contentions put forward by the Ld. counsel for the parties on either side and perused the record.
19. It may be noted that this Tribunal vide order dated 06.01.2022 had admitted the Corporate Debtor to CIRP. Being aggrieved by the said order the Corporate Debtor filed an appeal with NCLAT. Hon'ble NCLAT vide its order dated 01.09.2023 allowed the said appeal on the ground that the Corporate Debtor did not get sufficient opportunity to file reply. Therefore, opportunity was accorded to the Corporate Debtor to file reply and the reply was taken on record contents of which are discussed in preceding paragraphs.
20. Based on the averments, it has been brought out that the Corporate Debtor availed credit facility of Rs. 5 crores from Gujarat Industrial Investment Corporation Limited (GIIC) under a loan agreement dated 06.10.1997. It was agreed between the parties that the loan was to be repaid within a period of 6 years by 20 Equal Quarterly Installments of Rs. 15 lakhs.
21. Thereafter, on request of the Corporate Debtor, a Supplemental to Loan Agreement was executed on 18.07.1998 whereby GIIC cancelled and recalled



the amount of Rs. 2 crores out of Rs. 5 crores, keeping the repayment period same for the remaining amount of Rs. 3 crores. Thus, the principal amount got revised from Rs. 5 crores to 3 crores.

22. Subsequently, GIIC in consortium with Bank of Baroda had sanctioned and disbursed term loan facility of Rs. 2 crores and Rs. 1.95 crores. Accordingly, a joint Equitable Mortgage was created in favour of GIIC and Bank of Baroda on 28.07.1998 and 01.07.1999. The original title deeds in respect of the mortgaged securities was held by Bank of Baroda.
23. The Corporate Debtor defaulted in repayment of the loan on the accepted terms and conditions. It is seen from the SARFAESI Notice dated 22.06.2021 issued by the Petitioner that consequent to the default made by the Corporate Debtor, the account of the Corporate Debtor was declared Non-Performing Asset (NPA) in the year 2001. Further, GIIC had also initiated recovery proceedings against the Corporate Debtor. The Bank of Baroda took possession of the mortgaged properties being Nandesari Unit and Umraya Unit on 01.10.2002 and 23.06.2004 respectively.
24. Thereafter, the Corporate debtor referred the matter to the Board for Industrial and Financial Reconstruction (BIFR) and the proceedings before the BIFR continued till the dissolution of BIFR on 30.11.2016. It is mentioned in the petition that this matter is sub-judice before the Hon'ble Supreme Court in Special Leave Petition No. 31404/2012.
25. Subsequently, on request of the Corporate Debtor, GIIC executed a sanction letter dated 19.08.2017 granting One Time Settlement (OTS) to the Corporate Debtor to pay Rs. 9,87,56,641 and the Corporate Debtor made a part payment of only Rs. 94 lakhs.
26. Thereafter, the Government of Gujarat issued a Government Resolution dated 11.09.2017 providing for a scheme of relief and concessions to viable sick industrial enterprises in the state of Gujarat.



27. Pursuant thereto, the Industries Commissionerate issued letter dated 21.02.2018, approving the reliefs and concessions to the Corporate Debtor based on the Government Resolution dated 11.09.2017. Accordingly, the debt of Rs. 12.32 crores owed by the Corporate Debtor to GIIC was reduced to Rs. 7.17 crores and the Corporate Debtor was asked to make, down payment of 10% of the total payable amount within 30 days from the date of the letter. Accordingly, the Corporate Debtor made payment of Rs. 71.7 lakhs on 07.03.2018.
28. It is observed that the letter dated 21.02.2018 states that the remaining 90% outstanding amount was to be paid in 5 equal monthly installments commencing from the month subsequent to the month in which down payment was made.
29. It was submitted that remaining outstanding balance to be paid to GIIC by the Corporate Debtor stood at Rs. 5.87 crores when the said loan amount of Rs. 5.87 crores was assigned by GIIC to Omkara Asset Reconstruction Company Limited (the Petitioner herein) vide Assignment deed dated 14.08.2018. It is pertinent to note here that the Corporate Debtor was a party and signatory to the said assignment deed and there is no dispute to the same.
30. As already noticed, the Corporate Debtor sent letters seeking No Objection Certificate (NOC) from the Petitioner and also vide letter dated 04.02.2019, offered a One Time Settlement proposal to settle the due of Rs. 255 Lakhs within 6 months from the date of receipt of sanction with a grace period of 3 months at simple rate of interest @18% per annum.
31. The Petitioner gave NOC and further agreed to the OTS proposal vide letter dated 03.04.2019 on the following terms:
- a) *Out of Rs. 6.30 crores, Rs. 3.75 crores received towards release of Nandesari factory from buyer on behalf of the Respondent;*
 - b) *Balance amount of Rs. 2.55 crores (inclusive of Rs. 3 lakhs towards expenses incurred) to be paid as follows:*

Payment	Date on which payment to be made	Rupees
First Tranche	31.05.2019	20 Lakhs
Second Tranche	31.08.2019	236 Lakhs

- c) Grace period of 90 days shall be allowed at simple interest at 24% p.a. for the delayed period;
- d) In the event of failure to honor the repayment schedule including the grace period, the OTS will stand cancelled.

32. There is no dispute that the Corporate Debtor paid the first tranche amount of Rs. 21.2 lakhs, being principal of Rs. 20 lakhs and interest of Rs.1.20 lakhs as agreed. However, the Corporate Debtor by its letter dated 16.04.2019 had sought time to make the payment of the final OTS instalment of Rs. 235 Lakhs upto 31.03.2020 in following terms:

“After restart of operations and establishments of the Commercial Production we need a few months’ time to raise funds for the settlement of OTS dues.

We therefore request you to kindly grant us time till 31 March 2020 for the payment of the final OTS installment of Rs.235 lakhs. We shall of course strive to make the said payment as early as possible.”

33. From the Corporate Debtor’s request, it is clear that the Corporate Debtor agreed to pay the first tranche as per the OTS sanction letter however sought to modify the terms of the OTS by seeking extension for payment of final installment of Rs. 235 lakhs. This request is apparently only for the payment of second tranche.
34. The Financial Creditor vide letter dated 19.04.2019 agreed to the request of the Corporate Debtor but modified the terms stating *“subject to paying interest @ 24% p.a. on reducing balance basis.”*
35. The Financial Creditor’s understanding was that the extension of time for payment of second tranche of principal payment was approved subject to paying interest @ 24% on monthly basis. As, the no interest was being paid by the



Corporate Debtor despite various emails and reminders, the Financial Creditor, vide letter dated 08.01.2020, revoked the OTS and Extension granted on 19.04.2019 and called upon the Corporate Debtor to make the full payment (principal + interest) within 10 days. Since the Corporate Debtor failed to make the payment, it is submitted that date of default is 19.01.2020.

36. The Corporate Debtor in its reply to the petition, contended that it was agreed between the parties that the principal and interest was to be paid as one shot payment which as per the extension granted by Petitioner, was to be paid on 31.03.2020 with grace period of 90 days. Thus, according to the Corporate Debtor, the date of default being 30.06.2020 falls within the prohibited period under section 10A and therefore, the present Petition is not maintainable.
37. The main dispute between the parties is with respect to the interpretation of the interest payment @ 24% p.a. '*on reducing balance basis*'. Extensive arguments were done by both the parties on the maintainability of the present petition. The submissions are summarized in subsequent paragraphs.
38. Mr. Gaurav Joshi, Ld. Sr. Counsel appearing for the Financial Creditor, submits that since the Corporate Debtor did not dispute the said emails, therefore, the doctrine of *sub silentio acceptance* will apply. Ld. Counsel relies on the following judgments regarding interpretation of conduct of parties:
- a) *Godhra Electricity Co. Ltd. v. State of Gujarat,*
 - b) *Transmission Corporation of Andhra Pradesh Ltd. and Ors. Vs. GMR Vemagiri Power Generation Ltd. and Ors.*
 - c) *Bharat Petroleum Corporation Ltd. Vs. The Great Eastern Shipping Co. Ltd.*
 - d) *Navyauga Machilipatnam Port Ltd. vs. State of A.P.*
39. Per contra, Mr. Ashish Kamat, Ld Sr. Counsel for Corporate Debtor, argued that the Corporate Debtor had offered to make one shot payment of Rs. 235 lakhs along with interest within the grace period of 90 days with simple interest @ 24% for delayed period. It is further submitted that the OTS Sanction Letter dated 03.04.2019 read with Extension Letter dated 19.04.2019 did not cast any



obligation to remit interest payments on a monthly basis and that it only envisaged payment of a cumulative amount i.e. principal and interest together, in two tranches.

40. It is further argued that though the Petitioner had issued correspondence seeking monthly interest payments from May 2019 to December 2019, but Respondent's lack of response is not material to determine any degree of implied or silent consent when there are no such terms in the OTS Sanction or extension letter, and therefore, the concept of sub silentio is not attracted in the present case. The Corporate Debtor relies on the following cases:

- a) *McDermott International Inc vs. Burn Standard Co. Ltd. & Ors. (2006) SCC OnLine SC 600.*
- b) *Bharat Sanchar Nigam Limited & Anr. Vs. BPL Mobile Cellular Limited & Ors. (2008) 13 Supreme Court Cases 597.*

41. Furthermore, relying on the case of **Polyset Plastic Pvt. Vs. Shreya Life Sciences Pvt. Ltd.**, Mr. Kamat submitted that 'reducing balance basis' is merely method of calculating interest upon reduced balance left after part payment, if any. It does not imply monthly payment and such interpretation is erroneous.

42. In order to show that the Financial Creditor has not contractually justified the basis of its purported demand for monthly interest and that a party is bounded by its pleaded case Mr. Ashish Kamat, Ld Sr. Counsel relied on the following cases:

- a) *Bacchaj Nahar vs. Nilima Mandal (2008) 17 SCC 491*
- b) *Union of India vs. Ibrahim Uddin (2012) 8 SCC 148*
- c) *Ram Sarup Gupta vs. Bishun Narain Inter College & Ors. (1987) 2 SCC 555.*
- d) *MMTC Limited. vs. Vedanta Limited (2019) 4 SCC 163*

43. The Respondent has also urged following grounds for rejection of the present petition:

- a. It was submitted that monthly interest payment was neither

contemplated under OTS sanction letter nor in the extension letter. Thus, the Petitioner has wrongfully and illegally revoked the OTS sanction letter on 08.01.2020, however, the Corporate Debtor had time to discharge the OTS till 31.03.2020 and could not prematurely revoke the settlement. To support its contentions that a premature Petition is liable to be dismissed, as debt must be due on the date of default mentioned in the petition, reliance was placed on:

- a) *Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund* [(2021) 6 Supreme Court Cases 436.
- b) *Oriental Bank of Commerce Vs. Prakash Asphaltings & Toll Highways (India) Ltd. by NCLT Indore Bench dated 01.01.2021 in CP(IB) No. 319/7/NCLT/AHM of 2019*
- c) *Cable Corporation vs State Bank of India CP (IB) 361(MB) 2021.*
- d) *Innovative Industries Limited vs ICICI Bank & Anr.*

b. It is submitted that the default occurred only on 31.03.2020 and not prior thereto. Thus, default occurred during 10A period. Reliance is placed on the following cases:

- a) *Tattva Properties vs. Ashok Tiwari 2023 SCC OnLine NCLT 759*
- b) *Carissa Investments LLC vs. Indus Techzone Pvt. Ltd. (2023 SCC OnLine NCLAT 489)*
- c) *Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd (2021 SCC OnLine SC 72).*

c. The quantum of debt was disputed on the ground that by virtue of settlement of the OTS sanction letter based on Government policy, only the settlement amount remains and the original debt is unavailable. It is further submitted that breach of the OTS does not constitute Financial Debt due to novation of original debt. Reliance is placed on following judgments:

- a) *Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 @Para 53-61; NCC Limited v. Sembcorp Gayatri Power & Anr. (2017 SCC Online Hyd 881.*



- b) *Union of India vs. Kishorilal Gupta & Ors.*
- c) *Agson Global Pvt Ltd vs Prodalim CP.535 of 2022*
- d) *Bank of Baroda vs. M/s JBF Industries Ltd.*
- e) *Rakesh Wadhawan & Ors vs Abhay Manudhane I.A.2300 of 2020.*

d. Breach in OTS letter in furtherance to the Assignment Agreement is not 'financial debt'. Breach of payment term under which payment may be due would not fall under ambit of section 5(8) of the IBC.

e. Abuse of process of law and suppression of material facts. Reliance is placed on the following cases:

- a) *Dalip Singh v. State of Uttar Pradesh & Others & Oswal Fats & Oils Limited v. Addl Commissioner (Administration) Bareilly Division, Bareilly and Ors (2010) 4 SCC 728*
- b) *Rajesh Agarwal v. JSK Hotels Private Limited INCLT Jaipur - CP No. 54 of 2020 has reiterated findings of the Hon'ble Supreme Court of India in the matter of Krishna Lal Chawla v. State of U.P*
- c) *Amar Singh v. Union of India & Ors. (2011) 7 SCC 69*
- d) *NCC Limited v. Sembcorp Gayatri Power & Anr. (2017 SCC Online Hyd 881)*
- e) *APS Hydro Pvt. Ltd. v. SRK Constructions and Projects Pvt. Ltd. INCLT Hyderabad - CP No. 368 of 2021.*

44. We have duly considered the submissions of the parties.

45. Two important points are to be noticed. Firstly, while approving the OTS sanction letter dated 03.04.2019, the terms of OTS stated "Grace period of 90 days shall be allowed at simple interest at 24% p.a. for the delayed period", however, upon request of the Corporate Debtor seeking extension of time for payment of final OTS installment till 31.03.2020 and also assuring that it would be Corporate Debtor will strive to make payment as early as possible, the Financial Creditor approved the extension but the language used while granting



such extension is **“subject to paying interest @ 24% p.a. on reducing balance basis.”**. Obviously, the Financial Creditor was assured that some payments would be made as early as possible and payment of interest would be on reducing balance. The Financial Creditor was not completely wrong in expecting monthly interest from the Corporate Debtor.

46. Secondly, the Financial Creditor sent various emails dated 03.10.2019, 14.10.2019, 26.11.2019, 10.12.2019 and 21.12.2019 to the Corporate Debtor demanding monthly interest payments. However, the Corporate Debtor neither made any interest payment nor replied to any of the aforementioned emails denying its obligation to pay monthly interest. We also note that it was not in the above-mentioned emails that the demand for monthly interest has been raised by the Financial Creditor for the first time. It is pertinent here to look at the email dated 29.05.2019 sent by the Financial Creditor to the Corporate Debtor:

*“Dear Sir,
As per repayment schedule, your May month instalment is pending.
Please make the payment on or before 31.05.2019 to avoid penalty.”*

47. Thereafter, another email was addressed to the Corporate Debtor by Financial Creditor on 26.08.2019 stating as follows:

*“Dear Sir,
With reference to our sanction letter for OTS dated 03rd April, 2019 wherein we have allowed 90 days grace period at 24% interest. As per repayment schedule May month installment is not paid by you which was to be paid till 31.05.2019 and now the grace period is going to complete on 31.08.2019. We have already sent many reminders regarding the same. Now, this is the final reminder for the repayment along with interest for delayed period. In the event of your failure to honour the repayment with interest on or before 31.08.2019, the OTS will stand cancelled.”*

48. In response, the Corporate Debtor sent an email dated 28.08.2019 merely enclosing the cheque for Rs. 21,20,000/- which includes principal amount of Rs. 20 lakhs and interest of Rs. 1.20 lakhs/-. Nowhere, the Corporate Debtor



had disputed or denied that the interest payment was not to be made on a monthly basis. The conduct of the Corporate Debtor indicates that there was tacit understanding that Corporate Debtor would be paying interest. If that was not the understanding, then any prudent person would immediately deny its obligation to pay monthly interest. However, silence on the part of the Corporate Debtor indicates the common understanding of the parties.

49. Be that as it may be, the Corporate Debtor has not denied the debt. Admittedly, the Corporate Debtor has not returned the principal amount with interest @ 24% even till the final hearing of this matter. In fact, the matter was adjourned on several occasions to facilitate settlements between the parties but parties could not amicably agree to the settlement amount.
50. The Corporate Debtor insists that the debt was not due and payable on 19.01.2020 and but on 30.06.2020 which is within 10A period, hence, section 7 application is not maintainable. In the first place, we observe that in the letter dated 16.04.2020 seeking extension for payment of the second tranche till 31.03.2020, the Corporate Debtor had not requested for any grace period after 31.03.2020 and the Financial Creditor had approved extension only till 31.03.2020 without any grace period. Nonetheless, even without adding the grace period, the due date falls in the 10A period.
51. Although the Corporate Debtor is right in stating that no application under section 7 of IBC is maintainable for the debt which occurred during the 10A period, however, we are of considered view that a Financial Creditor is not precluded from filing section 7 petition for a continuous default that occurs even after the 10A period. We are supported by a latest judgment of Hon'ble Madras High Court in **Dharamshi K. Patel & Anr. Vs. Indian Bank & Ors. [Writ Petition No. 712/2024]**, decided on 23.01.2025:

“15. Section 10-A of IBC, 2016 is only a moratorium temporarily suspending initiation of CIRP. It is true that Section 10-A prohibits an application for initiation of CIRP of a Corporate Debtor, for any default arising on or after 25.03.2020 for a period of six months. The proviso



also indicates that no application can ever be filed for initiation of CIRP of a Corporate Debtor for the said default occurring during the said period, i.e., on or after 25.03.2020 for a period of six months or such further period not extending one year from such date.

16. In the instant case, though the default commenced after the period specified in Section 10-A, it is not in dispute that it continued even after the moratorium period. The intention of the legislature is to give relief by suspending initiation of CIRP. This Court, from the plain reading of Section 10-A is unable to agree with the learned Senior Counsel that even in a case where the default continued after the period of moratorium, no application can be filed.

*17. Learned Senior counsel relied upon the judgment of Hon'ble Supreme Court in **Ramesh Kymal [cited supra] reported in 2021 [3] SCC 224.***
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18. From the reading of the initial paragraphs of the said judgment, it is seen that the default by the Corporate Debtor in that case was on 30.04.2020. The application under Section 9 of IBC, 2016 was filed on 11.05.2020 on the ground that there was a default in payment of the operational dues. It was only in the said context, the application filed by the Corporate Debtor seeking dismissal of the application by virtue of Section 10-A of IBC, 2016 was allowed and the said order was confirmed by Hon'ble Supreme Court. Therefore, the judgment of Hon'ble Supreme Court which is appropriate in the facts of the case, cannot be relied upon to any other case where the default continued even after the moratorium period and the Petition by the Corporate Creditor was filed long after the moratorium period.

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22. Since proviso to Section 10-A mandate that no application shall ever be filed for initiation of CIRP of the Corporate Debtor for the default occurring during the moratorium period, the above judgment relied upon by the learned Senior counsel is in tune with the statutory provision. However, the proviso cannot be extended to cases where the default is continued beyond the moratorium period.”

52. In the present case, the Corporate Debtor heavily contended that the revocation of the OTS was illegal and arbitrary and that the Corporate Debtor was ready to pay the second tranche on the agreed extended due date i.e. 31.03.2020 + grace period of 90 days. The entire set of arguments of the Corporate Debtor was based

on this premises.



3. However, even if we go by the submission of the Corporate Debtor that the payment was due on 31.03.2020, we note that even after the said date, a letter dated 27.06.2020 was sent by the Corporate Debtor seeking extension of time for payment of the outstanding dues till 31.12.2020. This request was rejected by the Financial Creditor. Thereafter, on 07.01.2021, the Financial Creditor sent a letter stating that the *“dues remain unpaid till date”* and cautioned the Corporate Debtor of initiating legal proceedings to recover the dues. In response, the Corporate Debtor sent letter dated 20.01.2021 and stated that *“there is no default on our part. We are ready to give the final payment as per our OTS Agreement.”* However, no payment was made by the Corporate Debtor.
54. Thereafter, the Financial Creditor issued demand notice dated 22.06.2021 under section 13(2) of the SARFAESI Act, 2002 calling upon the Corporate Debtor to pay the outstanding dues. However, despite that, no payment was made by the Corporate Debtor. Consequently, the present petition has been filed by the Financial Creditor on 01.07.2022. Notably, the issuance of demand notice under SARFAESI Act and the filing of the present petition has been made after the prohibited period under section 10A of the Code. Admittedly, the Corporate Debtor has still not discharged its liability. Thus, the observations of Hon'ble Madras High Court in **Dharamshi K Patel** (supra) is squarely applicable in the present case. In view thereof, without going into the dispute whether the revocation of OTS by the Financial Creditor vide letter dated 08.01.2020 was valid or not, we can safely conclude that the default continues to exist and the Financial Creditor has established the debt and default.
55. Since we are satisfied that debt and default has been established in the present case, the Corporate Debtor's objections which were majorly based on the absence of default, stand rejected.
56. However, besides the argument on default, the Corporate Debtor also contended that there is novation of the original debt due to settlement/OTS and as such breach in the present case is under the said OTS and therefore, it cannot come



within the ambit of 'financial debt' under IBC. We note that the Petitioner is an assignee of the debt which was originally owed by the Corporate Debtor to GIIC. Further, the facts set out in the foregoing paragraphs clearly shows that it was on the basis of the loan amount which was disbursed between 1997 to 2000 that all the subsequent sanction letters, OTS letters, the Assignment deed dated 14.08.2018 and the subsequent OTS letters were exchanged between GIIC, Corporate Debtor and the Petitioner. Nowhere in any subsequent letters/communications, it is mentioned that the original loan agreement shall stand revoked or superseded.

57. We refer to **Mausumi Bhattacharjee vs. Jumbo Chemicals & Allied Industries Private Limited [Company Appeal (AT) (Ins) No. 886 of 2024]**, decided on 02.07.2024 wherein the Hon'ble NCLAT has observed as follows:

"28. We understand that if the contract is altered in material particulars to change its essential character, the modified contract must be read as doing away with the original contract but if the modified contract has no independent contractual force, no new contract comes into play. We do not find any such wording in settlement agreement dated 27.08.2019.

29. The question whether a subsequent agreement is an additional to the main agreement or not; as well as the fact whether new contract supersede old contract would depend on the facts and circumstances of each case. In the present case, based on fact and circumstances brought out on record before us, we do not find that old loan agreements or assignment deeds ceased to exist by signing settlement agreement dated 27.08.2019 and therefore we are unable to accept the pleadings of the Appellant that Section 62 of the Indian Contract Act, 1872 will come into play in the present appeal."

58. Based on the above ruling and considering the fact that there is no document to show that there has been novation of any of the letters/agreements by a subsequent letter/agreement, the contention of the Corporate Debtor in this regard holds no merit.
59. Further since there is a continuing default in the present case the case laws relied upon by the Corporate Debtor is not been dealt with.



It is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder.

61. We are supported by the decision of Hon'ble Supreme Court in **Innovative Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]** wherein it was held as follows:

“28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days’ receipt of a notice from the adjudicating authority.

30.....On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. Payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

62. As the debt and default is established by the Financial Creditor and the amount is above the threshold limit under section 4(1) of the Code and the petition is within limitation, we are satisfied that the present petition is maintainable.

63. Before we part with this judgment, we would like to emphasize that the proceedings before IBC are quite different than the proceedings before BIFR. Justice R. Nariman in **Swiss Ribbons Private Limited & Anr. vs. Union of India & Ors. [Writ Petition (Civil) No. 99/2018]** had remarked:

“85. The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, ‘trial’ having led to repeated ‘errors’,



ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. xxx

*86. We are happy to note that in the working of the Code, the flow of financial resource to the commercial sector in India has increased exponentially as a result of financial debts being repaid. ... **The defaulter's paradise is lost. In its place, the economy's rightful position has been regained.***"

(Emphasis Provided)

64. We cannot lose the sight that the proceedings before the IBC are not adversarial. The objective of the Code is to resolve the Corporate Persons which are under distress, in a time bound manner for maximization of value of assets of such persons. After implementation of insolvency law for last 8 years, it is seen that delay in admission have resulted in drastic erosion in the value of the assets of the Corporate Debtor. We note that the Corporate Debtor was before BIFR till 2016 when the BIFR was dissolved after enactment of IBC. There have been series of defaults by Corporate Debtor with GIIC before the loan of GIIC was assigned to the Financial Creditor. Even after the assignment of the debt to Financial Creditor on 14.08.2018, out of the outstanding debt of Rs. 2.55 crores, the Corporate Debtor was able to pay only Rs. 21.10 lakhs. This undisputedly proves that the Corporate Debtor is under distress and no case has been made out by the Corporate Debtor that it has sufficient funds to make payment to the creditors.
65. Given the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no.1028 of 2022 is **admitted** and ordered as follows:

ORDER



- i. The above Company Petition No. (IB) 1028(MB)/2022 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Chemstar Organics (India) Limited**.
- ii. The Petitioner has proposed the name of **Mr. Indrajeet Mukherjee** Registration No. **IBBI/IPA-001/IP-P-01533/2018-19/12450** to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 28.07.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA which is valid upto 06.05.2022. However, on our verification we note that the AFA is valid till 31.10.2025. Accordingly, we appoint Mr. Indrajeet Mukherjee as the Interim Resolution Professional (IRP) to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
- iii. The Financial Creditor shall deposit an amount of **Rs. 5,00,000/-** towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. This amount shall be utilized for the purpose of carrying out CIRP-related activities and not towards the fees of Resolution Professional unless approved by the Committee of Creditors (CoC) of the Corporate Debtor.
- iv. There shall be a moratorium under section 14 of the Code prohibiting the following:
 - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- vi. The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii. The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.
- viii. The public announcement of the Corporate Insolvency Resolution process shall be made immediately as specified under section 13 of the Code.
- ix. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge and cooperate with the IRP/RP.



- x. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

66. The Company Petition No. 1028/2022 is accordingly **allowed**.

SD/-

Charanjeet Singh Gulati
Member (Technical)

/Apurva, LRA/Uma, LRA/

SD/-

Lakshmi Gurung
Member (Judicial)